THE MINIMUM WAGE AS A LEGISLATIVE PROPOSAL IN THE UNITED STATES

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The economists have at least made out a presumptive case for the desirability of a minimum standard below which wages should not be allowed to fall in the low-paid industries. The suggestion is not that wages should be fixed by law or that the principle of competition in the fixing of wages should be entirely abandoned. It is rather that further limits should be placed on competition with respect to the labor contract beyond those that now obtain in the laws of most states concerning the hours of labor, the age limits at which children may work in various occupations, etc. The proposal is also further limited by most of its advocates to women and minors, partly of course for obvious constitutional reasons in this country, and partly because the low-wage industries are where we find women and minors in the great majority and also because it is in these industries for many reasons that women and minors are peculiarly weak in bargaining power and likely to bid against each other in a life and death struggle which will carry wages far below a living income for the worker and enable the industry to exist only as a social parasite.

The attempt to fix a maximum limit to agricultural wages for male workers was tried in England at several periods without great success, but those experiments in legislation were so different in their essential principles and the circumstances under which they were tried that they throw no light on the present minimum wage proposal. The attempts to standardize some of the items of the labor contract and to set certain definite conditions upon which the community will welcome or tolerate the existence of industries within its borders, otherwise free to make their own terms as between buyers and sellers of the commodities they use or produce and the labor they employ, began a little over a century ago in England when the first factory

act (the health and morals of apprentices act, 1802) was put on the statute book. Since that time a vast network of factory legislation has been evolved. Its success in the establishment of standards is not questioned, though great difficulties have been encountered in their administration and uniformly efficient enforcement. Yet no modern state would think of abandoning labor legislation. The minimum wage proposal must be regarded as a further attempt to enlarge the scope of labor legislation. It means simply the extension to the wage item of the labor contract of the common rules designed to protect a public interest as well as to maintain a fairer equality between the parties to the labor contract.

Minimum wage laws have been in force in Victoria since 1896 and in other provinces of Australia and New Zealand since then and in England since 1909. These statutes, however, are constructed on a theory of a wage board quite similar to an arbitration board under an executive initiative and control which would have little analogy or hope of successful achievement under our system of law. Massachusetts (1912) and Oregon (1913) have already begun an experiment in American legislation to give legislative expression to the principles of the minimum wage. Both establish a state commission of three persons appointed by the governor for a term of three years, the first commissioners to have their terms of office adjusted so that one vacancy will exist each year. Massachusetts provides for a per diem compensation in addition to travel expenses for the commissioners and Oregon only for expenses, while both provide their commissioners with a paid secretary, and for the payment of witnesses subpoenaed in investigations or hearings. The Massachusetts commission is a minimum wage commission charged with the duty of inquiring into the wages paid to the female employes in any occupation in the commonwealth wherein it has reason to believe that a substantial part of the employes are paid wages inadequate to supply the necessary cost of living and to maintain the worker in health.

The Oregon commission is an industrial welfare commission authorized and empowered to ascertain and declare the standards of hours of employment for women or for minors and what are unreasonably long hours for women or for minors in any occupation in the State of Oregon; secondly, standards of conditions of labor for women or for minors and what surroundings or conditions, sanitary or otherwise, are detrimental to the health or morals of women or

minors; thirdly, standards of minimum wages for women and what wages are inadequate to supply the necessary cost of living of any such women workers and to maintain them in good health; and fourthly, standards of minimum wages for minors and what wages are unreasonably low for any such minor workers. The Oregon law is entitled "an act to protect the lives and health and morals of women and minor workers, and to establish an industrial welfare commission and prescribe its powers and duties, and to define its powers and duties, and to provide the fixing of minimum wages and maximum hours and standard conditions of labor for such workers, and to provide penalties for violations of this act." It begins with a declaration that it shall be unlawful to employ women or minors in any occupation within the State of Oregon for unreasonably long hours or under such surroundings or conditions, sanitary or otherwise, as may be detrimental to their health or morals, or to employ them for wages, which in the case of women workers are inadequate to supply the necessary cost of living and to maintain them in health, and in the case of minor workers, for unreasonably low wages. The commission is therefore, in theory, an administrative body, designed to secure the necessary information to apply the standards determined by the rule laid down by the legislature for the protection of the health, morals and reasonable living conditions of women workers and minors.

The Massachusetts statute is entitled "an act to establish a minimum wage commission to provide for the determination of minimum wages for women and minors." It is therefore much narrower in its scope than the Oregon commission. The machinery contemplated, however, has much in common. Both commissions will organize subsidiary boards; in Massachusetts to be known as wage boards and in Oregon as conferences; in both cases composed of representatives of the employers and of the employes and disinterested persons representing the public in any occupation in which the commission finds conditions demanding and justifying its intervention. These subsidiary boards, somewhat analogous to the wage boards in the English and Australian legislation, report their findings and recommendations to the commission, which then issue orders or decrees. The orders and decrees of the commission do not take full force until after an opportunity is given for a hearing and due notice is served upon the parties affected; then, if they are adopted by the commission they have the full force of law.

In the Massachusetts statute the only penalty provided is the publication in four newspapers in each county in the commonwealth of the names of all employers who fail or refuse to accept the minimum wage declared and agree to abide by it, together with the material part of the findings of the commission and a statement of the minimum wage paid by all such employers. The Oregon statute provides that anyone who violates any provision of the act and therefore employs women or minors contrary to the standards enacted in the statute and concretely determined by the commission is guilty of a misdemeanor, and upon conviction, is punishable by fine of not less than $25 or more than $100, or by imprisonment in the county jail for not less than ten days or more than three months, or by both such fine and imprisonment in the discretion of the court. Furthermore any woman worker paid less than the minimum wage to which she is entitled under the order of the commission, may recover in a civil action the difference, together with attorney's fees, and no agreement on her part to work for less, shall be a defense in any such action. Both acts contain other provisions for the protection of witnesses in the investigations conducted by the commissions or their subsidiary boards and for the compulsory acceptance by newspapers of the publication of the findings and the protection of newspapers in the publication of same and also for the licensing of a limited number of handicapped workers who may be allowed to work for less than the minimum wages.

The Oregon statute seems to be based squarely on the police power for the regulation of public health, and the procedure worked out on lines analogous to well approved principles developed in the law of public service commissions.

The Massachusetts statute does not provide for the compulsory taking of property and may therefore not encounter serious constitutional difficulties.

The constitutionalty of any such legislation in American states may well be questioned and experimental statutes will have to be framed with great care in order to run any chance of being upheld by the courts. Only one state has thus far made provision directly by constitutional amendment for minimum wage legislation. Ohio, in its recent constitutional convention proposed a section relating definitely to this subject which was subsequently adopted as part of the constitution of Ohio, which now says "laws may be passed fixing and regulating the hours of labor, establishing a minimum wage and pro-

viding for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power."

There is a bill now pending in the Ohio legislature to establish a minimum wage commission and to provide for the determination of minimum wages for women and men. The bill follows very much more closely than the bills in other states the lines of the Australian and English legislation and by reason of the constitutional provision it is possible to include men as well as women within its provisions and also to make the findings of the commission mandatory and violations subject to penalties of fine and imprisonment and also give the employee a right to recover in civil action. The bill provides for a court review on appeal to the supreme court only on questions of law and also gives the commission the right to report questions of law to the supreme court for its determination and to be represented in all proceedings in the supreme court by the attorney general of the state. Thus far the legislature has not taken definite action on this bill.

Other minimum wage bills now pending in state legislatures are those of Wisconsin, Minnesota, Illinois, Colorado, Indiana, Washington, New York and Pennsylvania. In New York the Factory Investigating Commission has been authorized to continue its work and to report particularly upon the subject of wages paid to women and minors. The bill continuing the New York commission, which has just passed the New York legislature, practically makes of this commission a minimum wage inquiry commission. The Pennsylvania and the Wisconsin bills have been drawn on carefully worked out plans to meet possible constitutional objections, and in theory both bills differ from the Massachusetts and the Oregon laws and from the foreign legislation on this subject. The Pennsylvania bill makes no provision for wage boards. It declares that the public health and welfare demand that every woman employed by, or permitted to work for, any person within the State shall be compensated at such a wage rate as will enable her to support and maintain herself in health and reasonable comfort; and that children who are allowed to work shall receive, if they work full time, compensation equal to the cost of their support. The bill is based on principles strictly analogous to those of a public service commission empowered to fix rates and determine the reasonableness of charges. The commission is established to determine the lowest rate of compensation at which women can sup-

port and maintain themselves in health and reasonable comfort; and the lowest rate at which children can earn their maintenance, and to prevent their payment at a lower rate. Two classes of rate determinations are to be established, one applicable to females over sixteen years of age, and the other to children of either sex under sixteen years of age; and the wage rate when determined applies directly to the relationship between employer and employee and is enforceable upon the employer for whom the work is performed, whether done in an establishment, at home, or at any other place. Handicapped persons may be licensed by the commission to accept work for lower than the standard rate, and the standard rate is based on the legal number of hours that women and children may work, respectively, per week, having respect to the amount a worker of average ability and skill can do; and in a similar way a piece rate may be established by the commission. The orders of the commission are enforced directly by the commission after due notice and publication and a provision for court review in similar manner as in the case of the public service law. The details of the legal procedure in investigations, issuance of orders of publication, furnishing of copies, also in proceedings before the commission, are worked out with great care. Likewise the provision for penalties for the lower rate of compensation than that fixed by the commission, for discriminating against witnesses, for the concealment of testimony, and for giving false or misleading testimony, for newspapers refusing to publish orders, for dealing with first and second offenses, and for the recovery of wages in civil suits, are carefully worked out. This bill, if enacted into law in Pennsylvania, will furnish a decidedly interesting experiment in a new field of labor legislation, that promises to be far more significant in its results than even the extensive regulation of public utilities begun some years ago, and the experience in dealing with which the Pennsylvania minimum wage bill proposes to utilize in the public interest in the regulation of the relations between employers and employees.

The Wisconsin bill has also been drawn upon a new theory of constitutional regulation of the labor contract with respect to wages, by setting up a definition of "employment property," which means physical property used for the production and sale for profit of products of labor hired for wages; and of "oppressive employment," which shall mean an occupation in which employees are unable to earn a living wage. The living wage is defined as compensation for labor performed under reasonable conditions and sufficient to enable em-

ployees to secure for themselves, and those who are or may be reasonably dependent upon them, the necessary comforts of life. All employment property is declared to be affected with a public interest to the extent that every employer shall pay to every employee in each oppressive employment at least a living wage. It is unlawful for any employer to employ labor in an oppressive employment without first obtaining a license from the Commissioner of Labor, who is given power to revoke the license if, upon investigation, the employer is paying less than the living wage stated in the license as a minimum wage to be paid in such employment. This is to be determined by the Commissioner of Labor, who is vested with power and jurisdiction to have supervision of employment property, necessary to enforce this law and all orders under it; to investigate, hold public hearings, ascertain and classify each oppressive employment, and fix for such employment the living wage which shall be the minimum wage to be paid by all employers to all employees in such employment. The proceedings for hearings, etc., are the same as provided in the railroad commission law, and persons guilty of violation of the act are punishable as for a misdemeanor. The employee receiving less wages than the minimum required by law is entitled to recover in civil action the full amount of his living wage, together with costs and exemplary damages, notwithstanding any agreement to work for a lesser amount.

The New York bill, introduced as the official proposal of the National Progressive Party in the state of New York, provides for a commission with wage boards along the general lines of the Massachusetts act, but makes violations of the act a misdemeanor and gives employees receiving less than the minimum wage a right to recovery in civil action, with costs. It applies to women over eighteen years and to all minors under eighteen years of age, and is entitled, "an act to create a minimum wage commission to protect minors under eighteen years and women from employment at wages insufficient to supply the necessary cost of living, and maintain the health, morals and efficiency of the workers, and defining the powers and duties of such commission."

The Illinois bill is entitled "an act to establish the Minimum Wage Commission and to provide for the creation of wage boards and for the determination of minimum wages for women and minors and apprentices and for the publication of the findings of said commission and of said wage boards." It is drawn on the lines of the Massachusetts law.

With the exception of the Ohio proposal, the two existing laws in Massachusetts and Oregon which take effect July 1, 1913, and June 1, 1913, respectively, and all of the legislative proposals for the minimum wage deal only with the wages of women and minors. In the constitution of the commissions and the wage boards they do not give democratic representation to the workers themselves who presumably know best their own problems, nor do they provide definitely in all cases for male as well as female representation of the women and minors whose wages are in question. In the opinion of a well-informed critic the larger experience and better fighting and bargaining powers of the men have been an essential element of success in the Victorian and English wage boards in securing better conditions for the weaker, youthful and discouraged women workers in the underpaid industries in which very young girls so largely preponderate.[1]

Many important questions of policy are still unsettled and the data for their determination evidently quite lacking. There is need for much public discussion before the present tentative proposals can be made to yield any uniform standards for even frankly avowed experimental state legislation without constitutional amendment such as has been adopted in Ohio. It seems to be generally agreed that a flat minimum rate, state wide in its scope and applicable to all industries is not desirable. The lawyers will probably more generally favor the Pennsylvania plan of a state commission acting directly through its own agents upon the problems presented by each industry in turn and with power to establish zones, perhaps industrial zones rather than geographical zones, so as to classify its orders and rulings to secure a certain uniformity in the application of the law and in order to follow closely the decisions and procedure already approved by the courts in the regulation of the service and charges of public utilities by public service commissions. Those who approach the problem from the labor side and are familiar with the efforts at public arbitration of industrial disputes will be inclined to insist upon a larger measure of independent action by wage-boards acting under a commission sitting as a court of review. In most jurisdictions however such procedure will run counter to constitutional limitations which the courts have construed to limit the public service commissions. It may not be impossible to reconcile these divergent views and to devise a form of commission with subsidiary wage boards in which the best

[1] Florence Kelley, "Minimum Wage Legislation," in *The Survey*, April 5, 1913.

possible and strongest representation of the actual workers can be had and at the same time not weaken the authority of the commission nor authorize it to delegate either legislative or judicial powers which would be unconstitutional. Discussion may well center for a time on this difficult problem which will also indicate the necessity for the friends of minimum wage legislation to work at the same time for constitutional amendments which will obviate this difficulty and without which probably no very substantial or far reaching minimum wage legislation, certainly not affecting both men and women, is possible.

Still greater difficulties may be encountered in determining standards of income in fixing the minimum wage, that is, whether the income of the individual worker, man, woman or child, is to be considered solely in its relation to its purchasing power of the necessities of health, comfort and efficiency, or whether relations of dependence and obligation with respect to group or family incomes are to be considered. The implications of minimum wage legislation in other fields of social legislation constitute a third and very interesting series of problems for public discussion. Undoubtedly the general acceptance of the principle of the minimum wage implies a further extension of governmental power in the direction of increasing the industrial efficiency of those who do not measure up to the minimum standards adopted. This will mean far more than the state care of a few more public charges who are hopelessly handicapped and cannot find any place in modern efficient industry. It may mean little less than a revolution in public educational policy, in provision for trade schools, vocational guidance and industrial education on a scale that will make what at first sight seems to be a further restriction upon industry in reality the greatest boon to industry through the preparation of its workers to meet the demands of an increasing efficiency.

At all events the legislative proposals for the minimum wage in the United States have already revealed a demand for a social legislative program of no mean proportions and they must be regarded, discussed, adopted or rejected as part of such a program which in the language of the English Parliamentary leader, Mr. Winston S. Churchill, "bears witness to the workings of a tireless social and humanitarian activity, which directed by knowledge and backed by power tends steadily to make our country a better place for the many without at the same time making it a bad place for the few."[2]

[2] Winston S. Churchill, *Liberalism and the Social Problem.* London, 1909.